

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
SUBDIVISION ITEMS**

**February 13, 2014**

- I. **CALL TO ORDER** - The meeting was called to order at 1:32 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present - Mike Owens, Chair; Will Berkley; Mike Cravens; David Drake (departed at 4:37 p.m.); Karen Mundy; Carolyn Plumlee and Bill Wilson. Carla Blanton, Patrick Brewer and Frank Penn were absent.

Planning staff members present - Chris King, Director; Bill Sallee; Barbara Rackers; Tom Martin; David Jarman; Kelly Hunter; Cheryl Galt and Denice Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; Tim Queary, Department of Environmental Policy and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – There were no minutes to be considered at this time.

- III. **POSTPONEMENTS OR WITHDRAWALS** – The Chair asked for requests for postponement and withdrawal to be considered at this time.

- a. DP 2013-29: HEADLEY, NIVEN & VANCE PROPERTY, LOTS 1, 2 & 3 (AMD) (3/13/14)\* - located at 1500 Russell Cave Road and 295 West New Circle Road. (Council District 1) **(Vision Engineering)**

Note: The Planning Commission postponed this plan at their January 16, 2014, meeting. The purpose of this amendment is to revise the development on Lot 1 and include Lot 2 in the development. The Planning Commission originally approved this plan on May 9, 2013, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Kentucky Transportation Cabinet's approval of access to Russell Cave Road.
10. Clarify restaurant seating to include outdoor patio area (and any related off-street parking).
11. Correct, delete and consolidate notes #9 - #13 to the approval of the Urban Forester.
12. Denote that the proposed construction access from Russell Cave Road cannot be built or utilized except with the issuance of a permit for Building 1.
13. Label existing and proposed access points to Russell Cave Road.
14. Denote: No building permit shall be issued for Building 1 until the existing access (#2) to Russell Cave Road is closed. The new access shall be constructed to the approval of the Division of Traffic Engineering and the Division of Engineering.
15. Signage for right turn only at access #3.

Note: The applicant has requested a continued discussion of this plan to ask for the removal of condition #12 of the Planning Commission's approval granted at the meeting held on May 9, 2013.

The Subdivision Committee Recommended: **Postponement**. There are concerns with the applicant's request to delete condition #12 that addresses the proposed access point to Russell Cave Road.

The Staff Recommends: **Disapproval** of this request, for the following reasons:

1. The original approval by the Planning Commission was appropriate and consistent with the intent of Article 21 of the Zoning Ordinance and the Land Subdivision Regulations in protecting public health and safety.
2. There have been no changes in the traffic patterns or volume in the area in the past 8 months that would justify the removal of the condition.
3. The proposed drive-through facility on Lot 1 heightens the safety concerns with the proposed access with both the Division of Traffic Engineering and the KYDOT.

Representation – Matt Carter, Vision Engineering, was present representing the applicant, and requested postponement of DP 2013-29: HEADLEY, NIVEN & VANCE PROPERTY, LOTS 1, 2 & 3 (AMD) to the March 13, 2014, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

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\* - Denotes date by which Commission must either approve or disapprove request.

Action - A motion was made by Mr. Cravens, seconded by Mr. Wilson and carried 7-0 (Blanton, Brewer and Penn absent) to postpone DP 2013-29: HEADLEY, NIVEN & VANCE PROPERTY, LOTS 1, 2 & 3 (AMD) to the March 13, 2014, Planning Commission meeting.

- b. DP 2014-4: LANSBROOK PLAZA SHOPPING CENTER (4/3/14)\* - located at 3501 Lansdowne Drive.  
(Council District 4) (J. Kingston)

Note: The Planning Commission postponed this plan at their January 16, 2014, meeting. The purpose of this amendment is to add buildable area to building #3 and revise the parking area on that lot.

The Subdivision Committee Recommended: Postponement. The submitted plan filing does not appear to meet the limits of the variance approved for this location in 2000.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Clarify existing parking per GIS photograph for building #3.
9. Clarify purpose of amendment note.
10. Revise note #6 to include reference to Art. 16 of the Code of Ordinances.
11. Clarify site statistics, and update restaurant seating statistics for building #3.
12. Review by Technical Committee prior to plan certification.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of DP 2014-4: LANSBROOK PLAZA SHOPPING CENTER to the March 13, 2014, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Plumlee, seconded by Ms. Mundy and carried 7-0 (Blanton, Brewer and Penn absent) to postpone DP 2014-4: LANSBROOK PLAZA SHOPPING CENTER to the March 13, 2014, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, February 6, 2014, at 8:30 a.m. The meeting was attended by Commission members: Carolyn Plumlee, Eunice Beatty, Karen Mundy and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Chris King, Tom Martin, Jimmy Emmons, Traci Wade, Cheryl Gallt, Dave Jarman, Kelly Hunter, Barbara Rackers, Denice Bullock and Scott Thompson, as well as Captain Greg Lengal, Division of Fire & Emergency Services; David Lyons, Division of Police and Ed Gardner, Department of Law. The Committee made recommendations on plans as noted.

#### General Notes

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

- A. CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

**Criteria:**

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
- (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
- (3) no discussion of the item is desired by the Commission; and
- (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
- (5) the matter does not involve a waiver of the Land Subdivision Regulations.

**Requests can be made to remove items from the Consent Agenda:**

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Saltee identified the following items appearing on the revised Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

- a. PLAN 2014-3F: BLUESKY INDUSTRIAL PARK, LOT 5 (AMD) (4/7/14)\* - located at 351 United Court.  
(Council District 12) **(EA Partners)**

Note: The purpose of this amendment is to recreate a previously consolidated lot.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping.
  4. Addressing Office's approval of street names and addresses.
  5. Urban Forester's approval of tree protection area(s).
  6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
  7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
  8. Denote acreage of each lot on plan.
  9. Denote location of street cross-section on United Court.
  10. Denote Council's moratorium on sewer connections prior to plan certification.
- b. PLAN 2012-132F: PARK HILLS, UNIT 1C, LOT 1 (AMD) (4/14/14)\* - located at 3100 Pimlico Parkway.  
(Council District 8) **(Endris Engineering)**

Note: The purpose of this amendment is to reduce the building line along Pimlico Parkway, to create utility easements and to update property line distances and bearings. The Planning Commission originally approved this plan on December 13, 2012, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.

Note: The Commission's approval has since expired. The applicant now requests a reapproval of this plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions.

- c. DP 2014-5: MIRACON, INC. (PHASES I-IV) (AMD) (THE OAKS CONDOMINIUMS) (AMD) (4/7/14)\* - located at 395 Redding Road. (Council District 4) **(Midwest Engineering)**

Note: The purpose of this amendment is to comply with the Board of Adjustment approval and to show as-built conditions.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping and landscape buffers.
  4. Addressing Office's approval of street names and addresses.
  5. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
  6. Division of Waste Management's approval of refuse collection locations.
  7. Correct building line from New Circle Road.
  8. Addition of dashed lines on adjacent property.
  9. Identify T.P.A on property edges, as necessary.
  10. Addition of New Circle Road cross-section.
  11. Denote nearest area of storm water detention.
  12. Denote all existing easements.
  13. Correct plan to denote as-built conditions for the clubhouse and nearby parking.
- d. DP 2014-6: BLACKFORD PROPERTY, PHASE 4 (AMD) (5/6/14)\* - located at 6600 Man o' War Boulevard and 3210 Blackford Parkway. (Council District 12) **(EA Partners)**

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\* - Denotes date by which Commission must either approve or disapprove request.

Note: The purpose of this amendment is to reduce units by one, increase unit size and add parking.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Denote final record plat information on plan.
11. Provided the Planning Commission makes a finding that the plan is in compliance with the EAMP.

Mr. Sallee directed the Commission's attention to DP 2014-6: BLACKFORD PROPERTY, PHASE 4 (AMD), and said that this property is located in the Expansion Area, which requires the posting of a sign on the site. He then said that the staff had received an affidavit of the required posting of a sign, and the documentation received for this requests appeared to be in order. He added that, since this property is located in the Expansion Area, the Commission must also make a finding that the plan complies with the Expansion Area Master Plan. He noted that the purpose of this amendment is to change one dwelling unit into parking and open space, and the staff felt that the findings previously approved for DP 2013-30 were appropriate for this request, as well. Those previous findings were distributed earlier to Commission members

In conclusion, Mr. Sallee said that the items identified on the revised Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission or the audience to permit further discussion.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Mr. Wilson, seconded by Ms. Mundy and carried 7-0 (Blanton, Brewer and Penn absent) to conditionally approve the items listed on the revised Consent Agenda.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

#### 1. FINAL SUBDIVISION PLANS

- a. PLAN 2014-2F: WILLOW GLEN, UNIT 4, LOT 1 (AMD) (4/7/14)\* - located at 276 Old Mt. Tabor Road.  
(Council District 5) **(EA Partners)**

Note: The purpose of this amendment is to subdivide one lot into two lots, to eliminate the vehicular access to Old Mt. Tabor Road and to create an access easement from private street to proposed lots.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.

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\* - Denotes date by which Commission must either approve or disapprove request.

6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Provided the Planning Commission makes a finding on the access easement standards in accordance with Article 6-8(m) of the Land Subdivision Regulations.
9. Provided the Planning Commission grants a waiver to Article 6-8(f) of the Land Subdivision Regulations.

Staff Presentation – Ms. Gallt directed the Commission's attention to Willow Glen, Unit 4, Lot 1, and said that this is an amended final record plat for property located at 276 Old Mt. Tabor Road. She oriented the Commission to the location of the subject property on the rendering of this plat, and explained that the site is located between Bates Creek Road and Man o' War Boulevard. She said that the subject property is in a Planned Neighborhood Residential (R-3) zone, and the purpose of this amendment is to subdivide one lot into two single family lots, to eliminate the existing vehicular access to Old Mt. Tabor Road and to create a new access easement, on Walkers Way, which will service these two proposed lots.

Ms. Gallt said that the Subdivision Committee had recommended approval of the applicant's request, subject to the conditions listed on today's agenda. She briefly explained that conditions #1 through #7 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions concern the access easement for Walker Way.

Waiver Presentation – Mr. Martin directed the Commission's attention to the waiver report previously distributed, and said that the applicant has requested a waiver to Article 6-8(b) of the Land Subdivision Regulations, which governs street termination. He then directed the Commission's attention to the rendering and explained that the access to Old Mt. Tabor Road will be closed and the new access to the two proposed lots will be in lieu of a cul-de-sac at the end of Walker Way. He then said that this area was developed in 1993, and the subject property is a remnant of the original subdivision of the property. He said that there are several different types of cul-de-sacs in this area, and the applicant is proposing to construct a 30'x70' access easement that will function as a cul-de-sac.

Mr. Martin said that the staff had consulted with the different government divisions; and they had agreed that as long as there was enough spacing to allow the public service and safety vehicles to safely maneuver and turn around, this design will function in lieu of a full cul-de-sac. He then said that to avoid government responsibility in repairing damage in the provision of necessary public services, the staff is recommending that the private access easement, not the driveways to be constructed to public street standards.

Mr. Martin said that the staff is recommending approval of the requested waiver, for the following reasons:

1. The waiver will have no impact on public safety - consistent with the intent of the Land Subdivision Regulations.
2. Strict enforcement of the Land Subdivision Regulations street termination requirements would constitute a hardship for the applicant preventing efficient utilization of the property to develop single family homes consistent with the rest of the neighborhood.

Mr. Martin then said that this recommendation is made subject to the following additional requirements:

- a. Denote on the final record plat that the proposed access easement area be constructed to public street standards with an asphalt surface/asphalt base and granular base or 1 1/2" x 9".
- b. Denote approval of private street owners for authorization to access the subject property, prior to certification.

In conclusion, Mr. Martin said that, in conjunction with the waiver request, the Commission must make a finding on the access easement that will be used by these two lots. He directed the Commission's attention to the staff report and said that these lots will have their sole access by way of an access easement rather than a public or private street, and it will meet the intent of the Land Subdivision Regulations.

Mr. Martin said that the staff is in agreement and would offer the following findings for the Commission to consider: The findings for appropriateness of access easements as sole access for certain lots:

1. Allowing the proposed residential development to be accessed only via an access easement from the terminus of Walker Way is appropriate for the development, and is consistent with the intent of the Land Subdivision Regulations.
2. The construction of the access easement shall be built to public street standards for the necessary turn around area, so that large vehicles used by the Fire Department and Division of Solid Waste can properly serve the two new residential lots.

Representation – Rory Kahly, EA Partners, was present, representing the applicant. He said that overall they are in agreement, but wanted clarification if it is the staff's intention for the 30'x70' access easement to be fully paved. Mr. Martin directed the Commission's attention to the schematic of the access easement, and said that it was the staff's understanding that this entire area would be paved to provide adequate room for the larger vehicles to maneuver around. Mr. Kahly said that the submitted schematic was only an example of what could be done on this site. He explained that they were not necessarily stating that the entire access easement would be paved, but rather this size would provide more flexibility to determine the landscape screening and turnabouts.

Mr. Martin said that the staff wanted to make sure that the access easement would meet the requirements and that it is appropriately inspected and approved. He then said that, by leaving some flexibility, additional approval on the easement would be needed from the different divisions who deal with the infrastructure review. The staff felt that the simplest way to deal with this issue was to recommend that the access easement would be built to public standards. Mr. Sallee said that the staff does not have any concerns with the proposed landscape area, but rather their concern is with the ability for a solid waste truck to easily navigate a three-point turn on this private access easement. He added that if there is much diminution in this area, it will impact the turning movements.

Mr. Kahly said that they are agreeable to the street standards and they do not have a problem with the proposed "T" intersection; but as the staff report is written, the entire 30'X70' area is paved. The Chair asked if the schematic was showing a 30'X70' area. Mr. Kahly replied negatively and said that the submitted schematic only illustrated what would work in this type of situation; and in looking at the base of the easement, they are showing green space and landscape screening. He then said that, as it is written, every inch of the 30'X70' space would need to be paved, as opposed to providing an ample turnaround area.

The Chair asked who was responsible for providing the schematic. Mr. Kahly replied that EA Partners provided it. Mr. Martin said that the staff wants to clearly denote the requirements on the plat; and one possible solution is to add a condition to read: "Resolve to the approval of the Division(s) of Planning, Traffic, Fire and Waste Management prior to certification of the plat." He then said that, since this request is not being done as a preliminary subdivision plan, but rather the home builders would be constructing the access easement, the staff would prefer to have the requirements clearly denoted on the plat, which would allow the size of the easement to be enforced during construction.

The Chair asked if the staff is suggesting that solution to be part of condition "a" listed on the waiver report. Mr. Martin said that that language listed on condition "a" would need to be "Resolve to the approval of the Division(s) of Planning, Traffic, Fire and Waste Management prior to certification of the plat." The Chair asked if Mr. Kahly was agreeable, to which he replied affirmatively.

The Chair confirmed that condition "a" would now read: "Denote on the final record plat that the proposed access easement area is to be constructed to public street standards with an asphalt surface/asphalt base and granular base or 1"/3"/9," subject to the approval of the Division(s) of Planning, Traffic, Fire and Waste Management prior to certification of the plat."

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Berkley, seconded by Ms. Mundy and carried 7-0 (Blanton, Brewer and Penn absent) to approve PLAN 2014-2F: WILLOW GLEN, UNIT 4, LOT 1 (AMD), subject to the conditions, as presented by the staff, to include the findings for the use of an access easement, as presented by the staff.

Action - A motion was made by Mr. Berkley to grant the waiver to Article 6-8(b) of the Land Subdivision Regulations, as presented by the staff, with the two noted conditions, adding a third condition to reflect the new language as presented by the staff.

Discussion of Motion – The Chair suggested that the new language could be added to condition "a," to which Mr. Berkley agreed, amending his motion.

The motion was seconded by Ms. Mundy.

Commission comments – The Chair confirmed that a motion was made by Mr. Berkley and seconded by Ms. Mundy to approve the waiver, subject to the following conditions:

- a. Denote on the final record plat that the proposed access easement area is to be constructed to public street standards with an asphalt surface/asphalt base and granular base or 1"/3"/9," subject to the approval of the Division(s) of Planning, Traffic, Fire and Waste Management.

The Motion carried 7-0 (Blanton, Brewer and Penn absent).

- b. PLAN 2013-128F: COVENTRY (BELMONT FARMS), UNIT 8 (2/2/14)\* - located at 2550 Georgetown Road.  
(Council District 2) **(EA Partners)**

Note: The Planning Commission originally approved this plan on December 13, 2012, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.

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\* - Denotes date by which Commission must either approve or disapprove request.

5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas (Georgetown Aquifer).
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Denote adjoining property zoning.
11. Complete easement information to the south of this unit.
12. Denote that there will be no access to this lot from Georgetown Road.

Note: The applicant is requesting a waiver to Articles 4-7(d)(1); 4-7(d)(9); and 6-6 of the Land Subdivision Regulations.

Waiver Presentation – Mr. Martin directed the Commission's attention to Coventry (Belmont Farms), Unit 8, and noted that this is a final record plat for property located at 2550 Georgetown Road. He said that the Planning Commission previously approved this request on December 12, 2012, and the purpose of this request is to construct a new elementary school on 15 acres of land. He oriented the Commission to the location of the subject property on the rendering, and explained that the new elementary school is located at the intersection of Georgetown Road and Spurr Road, across from old Linlee School property, and just behind the subject property is a residential area.

Mr. Martin said that the applicant has returned to the Commission due to the timing constraints imposed by the Fayette County School Board's need to take title of the 15-acre property in order to move forward with this project. He then said that the Fayette County School Board is exempt from local zoning regulations, but the applicant needs to request several waivers to Article 4-7(d)(1) of the Land Subdivision Regulations, which requires substantial completion of the public improvements prior to the certification of a final record plat; to Article 4-7(d)(9), which requires that a performance/warranty surety be posted to ensure completion of the public improvements; and to Article 6-6 requiring that public sanitary sewer service be provided to all subdivision lots.

Mr. Martin then said that the staff is recommending approval of the requested waiver of Article(s) 4-7(d)(1) & 6-6, for the following reasons:

1. The requested waiver would relieve an exceptional hardship for the applicant by allowing the coordination of the public improvements with the construction of the other school site improvements.
2. Granting the waiver will not negatively impact public health and safety as the completion of public improvements for the Lot will be completed with the construction of the proposed elementary school.

Mr. Martin noted that this recommendation is made subject to the following additional requirement:

- a. The applicant will post a Performance/Warranty Surety in conformance with the Land Subdivision Regulations to cover 100% of the construction costs of the public improvements.

Mr. Martin said that the staff is recommending disapproval of the requested waiver of Article 4-7(d)(9), for the following reasons:

1. The requested waiver does not meet the intent of the Land Subdivision Regulations in protecting public health and safety by ensuring the timely completion of the required public improvements.
2. The applicant has not demonstrated that the posting of a surety in conformance with the requirements of the Land Subdivision Regulations constitutes any exceptional hardship, especially since the extension to the lot is not thought to entail hundreds of feet of pipe.

Commission Questions - Mr. Wilson asked what will happen if Fayette County Schools does not receive the waiver request to the required Performance/Warranty Surety. Mr. Martin said that, as part of the applicant's contractual obligation to FCPS, funds have been posted to an escrow account to develop the property. He then said that, in the past, other school sites have posted the Performance/Warranty Surety; and the staff believes this site should be required to do the same.

Representation – Rory Kahly, EA Partners, was present, representing the applicant. He said that they are in agreement with the staff's recommendations and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 7-0 (Blanton, Brewer and Penn absent) to approve the waiver of Article 4-7(d)(1) for PLAN 2013-128F: COVENTRY (BELMONT FARMS), UNIT 8, as presented by the staff.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 7-0 (Blanton, Brewer and Penn absent) to disapprove the waiver of Article 4-7(d)(9) for PLAN 2013-128F: COVENTRY (BELMONT FARMS), UNIT 8, as presented by the staff.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 7-0 (Blanton, Brewer and Penn absent) to approve the waiver of Article 6-6 for PLAN 2013-128F: COVENTRY (BELMONT FARMS), UNIT 8, as presented by the staff.

## 2. DEVELOPMENT PLANS

- a. DP 2013-90: SPRINGDALE SUBDIVISION, UNIT 2, BLOCK A, LOTS 1, 2 & 3 (2/13/14)\* - located at 659 Mitchell Avenue. (Council District 11) **(Barrett Partners)**

Note: The Planning Commission postponed this plan at their November 14, November 21, and December 12, 2013, meetings.

The Subdivision Committee Recommended: Postponement. There are concerns with the proposed lotting and the platted 30' building line.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Provided the Planning Commission makes a finding on the use of an access easement in accordance with Article 6-8(m) of the Land Subdivision Regulations.
11. Discuss required information for private open space.
12. Discuss proposed lotting.
13. Discuss resolution of building conflicts with platted 30' building line.

Staff Presentation – Mr. Martin presented the final development plan/preliminary subdivision plan for to Springdale Subdivision, Unit 2, Block A, Lots 1, 2 and 3, located at 659 Mitchell Avenue. He directed the Commission's attention to the rendering of this plan and oriented them to the surrounding street system. He said that the subject property is located just off Lane Allen Road on Mitchell Avenue, and the purpose of this development plan request is to develop ten townhouses and one greenspace lot, on a site just over ½ acre in size. He explained that the townhouses and parking area will be oriented toward Mitchell Avenue. As for the traffic circulation, the applicant is proposing a one-way access through the parking lot. He said that each of the townhouses will be 28' in height, and each of the 3-bedroom units will be approximately 22' x 85' in size. He then said that there will be an underground retention basin installed in the parking lot near the exiting access, as well as two easements at the rear of the property.

Mr. Martin said that this request had generated a lot of discussions and meetings between the staff and applicant, as well as between the applicant and the residents of this area. He directed the Commission's attention to the staff handout, and explained that on the original submittal, the applicant wanted to use herbies rather than have a dumpster service. However, through the review process, the Division of Solid Waste made it clear that dumpster service would be needed for this development. He said that the applicant had then proposed a standard dumpster enclosure in the front yard; but that design was unacceptable to the staff, and a staff recommendation of disapproval was put forward to the Planning Commission. Subsequently, the staff met with the applicant; and, at that time, the applicant had submitted another revision that attempted to demonstrate their ability to address the staffs concerns with the front-oriented dumpster. They had proposed a single, four-yard dumpster in the same location; and the view of the dumpster would be obscured from Mitchell Avenue by adding a small wall along the front of the property, as well as a berm and additional landscaping.

Mr. Martin said that the staff does encourage infill, redevelopment and the utilization of properties. However, with the challenges of this site and the need to have an appropriate design, as well as the need to address the dumpster location, the staff is recommending that the number of townhouses be reduced by one unit and that the dumpster be relocated. He informed the Commission that the staff had discussed these two concerns and limitations of the property with the applicant.

Planning Commission Questions – Mr. Drake asked if there had been any work between the staff and the applicant in redesigning this site. Mr. Martin said that, from the beginning, the staff voiced its concern with the applicant about the number of units and the limitations of the site; and suggested to the applicant to move the units closer to Mitchell Avenue, and place the parking and the dumpster to the rear of the property.

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\* - Denotes date by which Commission must either approve or disapprove request.



Mr. Drake then asked about the sizes of these units. Mr. Martin said that each of the townhouses will be 28' in height; each will have 3 bedrooms, and be approximately 22' x 85' in size. He then said that the applicant believes what they are proposing is an appropriate solution, but the staff is still recommending that one of the units to be removed.

The Chair asked for clarification to condition #11. Mr. Martin said that the Zoning Ordinance requires a certain amount of open space for each of these lots, and the staff is comfortable that the applicant can comply with Article 8-10(o)(3) of the Zoning Ordinance.

Mr. Berkley said that the applicant had originally proposed eleven units and now they are proposing ten units. Mr. Martin said that the applicant had always proposed ten units, plus one homeowner's association lot. Mr. Berkley asked, with the open space requirement, what are the lot sizes. Mr. Martin said that the lotting pattern would vary in size, from 1,600 sq. ft. to over 2,000 sq. ft. He then said that this property is in a High Density Apartment (R-4) zone, but they are allowed to meet the Townhouse Residential (R-1T) zone development standards.

Ms. Plumlee said that there are no sidewalks on Mitchell Avenue; and due to the limited on-site parking, on-street parking could be encouraged. Mr. Martin agreed, and said that on-street parking may be encouraged on Mitchell Avenue.

Mr. Martin added that there is an access easement associated with this request, and the staff had provided those findings to the Planning Commission. He added that, in an attempt to meet Division of Fire's and Solid Waste's concerns, the size of the access easement had been increased to help the larger vehicles maneuver through the center of the property.

The Chair asked if there are any sidewalks along Mitchell Avenue. Mr. Martin said that sidewalks do exist on Mitchell Avenue.

Representation – Nick Nicholson, attorney, and Tony Barrett, Barrett Partners, were present, representing the Mr. Perry. He gave a brief history of this property, and said that this section of the Springs Inn property was used, more or less, as the efficiency units for people who needed extended stays. There were 13 units on this section of the hotel, and each of these units included small kitchens for the guest. He said that, for 40 years, these units were associated with the hotel until the site was demolished and purchased by Mr. Perry. Mr. Nicholson said that this property is zoned R-4, and it does allow not only townhomes, but it allows the density that is being proposed on this site. He then said that they are not requesting a zone change; this is a review of a final development plan, which has very different standards in reviewing a request. He added that Article 21 of the Zoning Ordinance basically governs when a development plan is required to be approved, modified or denied by the Commission. This request completely complies with the Zoning Ordinance and the Land Subdivision Regulations. They are not requesting any type of variances or any type of waivers for this property. In addition, this property does not create any flooding, drainage, traffic, health, safety or any type of nuisance problem, which are the reasons for a plan to be modified or denied by the Planning Commission. He then said that this request is appropriate for approval and they believe it must be approved under Article 21 of the Zoning Ordinance.

Mr. Nicholson presented a PowerPoint presentation to the Planning Commission, and briefly said that this is a very unusual lot because it is located in the curve of Mitchell Avenue and extends from Lane Allen Road to Clays Mill Road. He then said that, it is because of the shape of lot, that their creative design is appropriate for this area. He added that the staff had reported that the proposed density is not necessarily appropriate for this site, but they believe their proposal is good planning. This proposal is in complete compliance with every rule that is required; and, even though this site is not within the Infill and Redevelopment Area, it is very much a vacant lot that is underutilized, which the Comprehensive Plan speaks to.

Mr. Nicholson said that this property is zoned R-4 and the density requirement for this zone is being met. He noted that his client had met with the staff many times, as well as with the neighbors regarding their concerns; and they believe they have submitted a revised plan that is in complete compliance with the regulations. He said that the staff had mentioned moving the townhouses closer to Mitchell Avenue to align with along the sidewalk; but when there are contiguous townhomes together, the units must be in a straight line. Unfortunately, they can not bend the townhomes around a curve because it will create an oddly shaped townhome. He said that, for this particular property, having the townhomes curve with Mitchell Avenue would result in the units being smaller at the rear, plus it would result in the loss of a unit. He then said that his client would have to specially design each unit, which would be costly.

Mr. Nicholson said that this is not about maximizing profitability, but rather it is about losing a townhome and enduring more financial cost. He then said that, if this was about maximizing profitability, his client could have submitted a request to construct an apartment complex, which is allowable under the R-4 requirements. He added that his client could had worked within the site constraints, but an apartment complex would need variances, and this is why they believe their proposed townhomes are more in keeping with the neighborhood, which both the staff and the residents agreed. He then said that, if the idea of moving the units forward was not appealing to the

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neighborhood, they would not have recommended it and they certainly would not have thought that the townhomes were not in keeping with the neighborhood.

Mr. Nicholson directed the Commission's attention to the overall aerial photograph, and said that the Commission had previously approved a CVS Drug Store at the corner of Harrodsburg Road and Lane Allen Road. That has since been built. He then said that the Commission also approved the further development of the Springs Inn property that will result in several fast food restaurants and a retail use. He explained that their townhome development will be facing those developments. If these units were moved closer to Mitchell Avenue, their proposed landscaping would not be able to buffer the residential area from the commercial area that will be developed on the Springs Inn property. He said that the commercial uses are not required to provide the same heavy landscaping that his client is proposing; and without that additional landscaping, these units will be looking at the rear of the fast food restaurants. He then said that, if this property were to have single family residential units, there would be very little landscaping to buffer the houses, which is why the townhouses are more marketable. They believe it would not be fair to subject a single family residential home to the rear view of the pending commercial uses. They believe this would lead to the underutilization of this lot.

Mr. Nicholson said that the last remaining issue is the dumpster, and this tells a lot about the creative thought that has gone into this process and the resulting design. He then said that the staff is recommending that the dumpster location be moved closer to the single family residential area. He asked, in the past, how many times the staff has requested that an applicant move a dumpster closer to a single family residential property. He said that, at the last Planning Commission meeting, a condition was placed on a request to move the dumpster further away from the single family residential lot. He then said that they believe they have optimized efficiency for the Division of Waste Management to access the dumpster, and have also made it less of an inconvenience for the tenants who will be living on this property. He noted that the Division of Waste Management had approved this location for the dumpster. He said that there will be a significant amount of landscaping in front of the dumpster to shield it from the street view. He further explained that there will be a 5' stone wall surrounding the 4' dumpster, and there will be a 3' garden wall in front of the stone wall, as well as a 2' landscape berm that will come up to meet the height of the wall. He said that, from the street level, the dumpster will be completely screened and out of sight for pedestrians. He then said that Section 16-4.1 of the Code of Ordinances, not only contemplates having a dumpster in a residential area, but it has very specific requirements to follow, with which this project is completely in compliance. This design does not cause a direct nuisance to the neighbors; it is completely screened from the pedestrian and the traveling public, and it is in compliance with the Code of Ordinances. He said that they did contemplate using roses and herbies for trash collection, but they believe it would be more of a burden to have both containers lined up on Mitchell Avenue. This is why they came back to staff with the dumpster proposal and its location.

Mr. Nicholson said that the only remaining issue is whether or not these units are taking up too much space or lot coverage. He then said that, in researching the Property Valuation Administrator website, there are houses in the general vicinity with and without garages. The garage square footage is not listed in the total square footage of a property, but typically a one-car garage adds 240 sq. ft. to the total square footage. Their proposal is showing 726 sq. ft. for their building coverage, and this is very similar to the surrounding neighbors. Mr. Nicholson said that it was mentioned that these units would be too highly priced; but they have compared similar townhouse communities, and their market price would range between \$139,000 and \$142,000. He noted that, according to the Property Valuation Administrator, the market value for the existing houses in this area ranges from \$130,000 to \$150,000. This project is in keeping with the neighborhood.

In conclusion, Mr. Nicholson said that they believe they have a proposal that is in complete compliance with the Zoning Ordinance, the Land Subdivision Regulations and it is in keeping with the neighborhood. He then said that, if the dumpster is relocated, it will require a unit to be removed, resulting in a rise to the development cost, and placing a burden on the developer.

Planning Commission Questions – Ms. Plumlee asked if a recycling bin would be placed along with the dumpster. Mr. Nicholson replied affirmatively, and indicated that there is room to have both recycling and the dumpster containers.

Mr. Drake said that an apartment complex would result in a higher yield, but the applicant is anticipating a yield that is allowing the applicant to drive the estimated prices of these units. He asked, if the number of units were reduced by one, what impact there would be on this development. Mr. Nicholson said that it would be a direct cost of \$38,000 if a unit is removed; and as for the price per unit, he could not say what that market value would then be.

Mr. Berkley asked, even if a unit was removed, where the dumpster would be relocated. Mr. Nicholson said that even if a unit was removed, they do not believe the dumpster could be relocated away from the single family residential area at the rear of the property. He then said that the townhouses are required to be built in a straight line in order to meet the turning radius for the larger vehicles. If the townhouses were built along the frontage of Mitchell Avenue, then the dumpster would be closer to the single family residential area, and they believe this is inappropriate.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. Tee Bergman, Secretary of the Mitchell Neighborhood Organization, also a 28-year resident of the 600 block of Mitchell Avenue, was present. She said that their organization is one year old, and it was started specifically as a result of the Springs Inn development. She then said that, as an organization, they take their responsibilities very seriously to preserve and enhance what they value as a neighborhood. She added that they respect the applicant's right to build on this site; however, they can not support this proposed development plan.

Ms. Bergman said that this area is one of the oldest neighborhoods in Lexington, and the houses range between 60 to 70 years old. She then said that these houses were built on nice-sized lots with detached garages. Most of the houses in this area do need repair, but they have good bones and good character. She said that they are doing their best to keep their bones strong and their character intact, but today they need the Planning Commission's help. She then said that, in addition to the area being older, this neighborhood is also a fragile neighborhood in a state of transition, and it will not take much to diminish the character and stability of this neighborhood. The action that the Planning Commission takes today will have a long-term impact on this neighborhood. She said that they are concerned that this neighborhood will become a neighborhood in decline, should this proposal be approved.

Ms. Bergman said that they feel their property values will slowly decline, and the majority of the homes that are now owner-occupied will become rental properties. She then said that they are concerned that the existing homeowners will not have an incentive to maintain or make improvements to their property. She believes that this area is at risk of people moving in, for a short timeframe, and then disappearing, while contributing nothing to the sustainability of their neighborhood.

Ms. Bergman said that the selling of the Springs Inn property has resulted in what they are dealing with today. She then said that the neighborhood's vulnerability began at that point, resulting in Mitchell Avenue becoming bookended between the proposed development of the Springs Inn property and the proposed development of the health clinic on Southland Drive. She said that, as everyone was aware, the Rafferty's Restaurant had pulled out, and now they are facing more fast-food restaurants being developed in its place. She expressed that this once quiet street will now result in either a cut-through or an access to the proposed fast-food restaurants. She added that, directly across from the proposed townhouse development, is the last remaining lot on the Springs Inn property, and the type of use for that property is unknown at this time. She believes that when that lot develops, it will direct the outgoing traffic onto Mitchell Avenue.

Ms. Bergman said that, since the fall, the neighborhood had met twice with Mr. Barrett and Mr. Perry; and, on one occasion, Mr. Simpson was present to discuss the plan, to exchange ideas and to see if there was some type of common ground or room to compromise. Unfortunately, there was no compromise and there were no alternative proposals. She then said that, at each meeting, the neighborhood organization clearly stated what they were opposed to, and provided alternatives. Ms. Bergman said that one of their objections is to the proposed density. There are too many units for the size of this lot. She then said that Mr. Perry had stated that, to make the profit margin, he needed to build that many units on this lot. She added that the number of units determines the location of the buildings; and in looking at the rendering, all of the parking is at the front of these units. This type of look creates the look of "second-rate" housing.

Ms. Bergman said that their next objection is to the dumpster being located within 10' of Mitchell Avenue, and that the 30' front yard setback is not being met. Once again this creates the look of second-rate housing. She then said that the neighborhood is requesting to place the units at the front along Mitchell Avenue, with the parking and dumpster in the rear; and if that was not possible, then reduce the number of units to incorporate the 30' setback, which would provide more greenspace.

Ms. Bergman expressed her concerns with the proposed development plan and how it will contribute to the decline of the neighborhood. It is her belief that these units would eventually become rental units for student housing due to their location. She said that, with Harrodsburg Road, Lane Allen Road and Clays Mill Road surrounding these units, plus the upcoming commercial uses, families with small children and pets would not want to move to this location. However, it would appeal to the student housing market. She indicated that, due to the view of the fast-food restaurants and the minimal greenspace area, families would not want to move here. She noted that these lots hardly have enough room for families and their pets to enjoy, and it would not provide a lot of sunshine.

Ms. Bergman said that the possibility of these units becoming rental properties for Sullivan College and the University of Kentucky is very upsetting for the residents of this neighborhood. She then said that the current property owners are concerned that their property values will decrease. She noted that there are currently five houses within the 600 block of Mitchell Avenue that are already rental properties, and adding 10 more rental properties will change the character of this street. She then said that this proposed development will not promote the area as being attractive and appealing, and it is not consistent with the existing character of the area. It will lower the property value of the existing homes. She asked, with all of the rental properties on Broadway, how there can be a need for more.

Mr. Bergman said that the current traffic volume in this area will be increased as the new restaurants come open, and not all of the incoming traffic will exit back to Harrodsburg Road. This issue was discussed at the beginning; and, at that time, the applicant had agreed to provide funds to install speed humps. However, with this proposed development plan, this issue must now be renegotiated. She said that there are already existing issues with speeders on Mitchell Avenue; and with this development, the traffic will increase.

Ms. Bergman said that, as for the dumpster, camouflaging it is a start; however, it does not change the fact that the dumpster will be only 10' from a public sidewalk. If there is one design feature that speaks volumes about the quality and care that has gone into this development, it is placing the dumpster next to a public sidewalk. She continued to say that she is an advocate of proper landscaping, and it is critical for any new development. However, when the CVS Drug Store was approved at the corner of Harrodsburg Road and Lane Allen Road, 3 years ago, landscaping and trees were planted to help screen the neighborhood. During that time, three trees had died and were not replaced. She said that it took multiple emails to locate someone, who cared and then they only replaced one tree. She indicated that the property owners of the townhouses will not take the responsibility for maintaining the trees and shrubs. She said that everyone knows what happens on their street, in our town and in our city, when no one cares for the vegetation. She said that the newly adopted Comprehensive Plan makes it very clear that existing neighborhoods are a vital part of the community. With its unique characteristics, it should not be endangered or marginalized by a development. She added that the Comprehensive Plan also promotes neighborhood prosperity and success; and it provides the tools to ensure that old and new neighborhoods are thriving and that ones in decline are given full access to paths to success. It is the neighborhood's position that this design, the density and the physical layout of this development, are not compatible or complementary to the existing single family homes in this neighborhood. In closing, she said that this development will not improve the livability of the neighborhood.

Helen Morrison, residing at 571 Mitchell Avenue, was also present on behalf of the neighborhood association. She said that they respect Mr. Perry's right to build on the Springdale lot and make a profit; but the current proposal is not thoughtfully designed, and it will not enhance the neighborhood. They do not see any true effort in providing a creative and problem-solving solution. She said that it appears that the main focus of the plan is to squeeze as many lots on this site as possible. She then said that, in the beginning, the dumpster was left off the development plan, which is further evidence that there was no thought in planning of this project; and building a wall to hide a dumpster, just to get it through this process, is not a good example of good design.

Ms. Morrison said that a good design is to consider the entire picture at the beginning, and to include the character of nearby neighborhood. She then said that the best solution is to talk to the neighbors and consider their concerns and desires. This was not done in this case. She said that this is particularly important because this area is 60 years old, and is characteristic of a post-war suburb. She said that most of these homes are owner-occupied; and some of the homeowners have lived in this area for 60 years, while other people are second and third homeowners. She said that the homeowners in the area deserve some consideration in the design process, and not after the fact, as it has been done in this case.

Ms. Morrison said that one argument that they have heard is the way to make money off this project is through the number of units. She then said that Mr. Perry has the right to choose his profession and to try to make a profit, but Lexington does not owe him a profit at the expense of providing a good design. She added that she is confident that a good design and making a profit are not mutually exclusive. If they are, then we are all in real trouble, and building needs to stop until that problem is sorted out. She said that, according to PVA, Mr. Perry acquired the property for \$137,000, which, for this area, is a good price. She then said that she is sure that a more thoughtful design can be done while still making a profit.

Ms. Morrison said that the 2013 Comprehensive Plan asks how all of Lexington's neighborhoods can be great and successful. She can not answer that question in full, but she can say that this honorable Commission serves at least in part as the guardian of good design, which is a big part of the picture. She added that they need the Commission to enforce the highest standards in every small-scale development. If all of the small-scale developments were added together, within a 5-year period, there is a bigger impact on the quality of life - bigger than the Rupp Arena and the Centre Pointe projects combined. She said that this proposal is a small part of "growing Lexington up, and not out," which is important. She then said that, while no single development will ruin Lexington neighborhoods, encouraging redevelopment and infill with poorly designed projects will damage Lexington more quickly than people think. In closing, Ms. Morrison respectfully asked that the Commission reject this proposal and require a new, more thoughtful design to be submitted.

Planning Commission Questions – Ms. Mundy asked Ms. Morrison why she loves living in this neighborhood. Ms. Morrison said that she can't explain why she loves this area; but she can say that the neighbors on Mitchell Avenue know each other, and Mitchell Avenue is near everything. She then said that the houses built after a certain timeframe don't have the solidity unless they are very expensive, custom-built houses. Plus, these are modest homes that are on large lots, and they are affordable. She indicated that these lots allow the homeowners to have gardens, pets and so forth, and it's a beautiful neighborhood. She expressed that, she is not against the development; but now there is tension between sustaining the quality of life of the neighborhood and the new development.

Audience Comment (cont.) – Patricia Dillon, resident of the 600 block of Mitchell Avenue, was present. She said that she has lived in this area for the last 17 years, and she cares about the neighborhood. She then said that this area has mature trees, and that is one of the reasons she moved to this area from the Garden Springs area. She added that this area has very dense plantings and mature trees, which adds to the beauty of these lots. She said that Mitchell Avenue is neighbor-friendly because people can interact with each other in the front yards.

Ms. Dillon said that she owns a Cape Cod style house, and it is a very sturdy structure. She noted that when bad weather hits, she feels safe because her house was well built. She said that she had contemplated moving to a different area, but she can not find another house that would provide her with the same community feeling and the walkability that this area has to offer. This neighborhood has valuable assets because it offers everything that the other Lexington neighborhoods are trying to attain, such as affordable housing; a sense of community; walkability and bike lanes. The neighbors want to hang onto that quality of life, but they feel that they are under siege from the developers, who just want to make a profit. Ms. Dillon asked for the Commission to please help them.

Rebuttal – Mr. Nicholson said that the majority of the comments that were expressed were about the commercial uses; specifically they mentioned the health care clinic on Southland Drive and the development of the Springs Inn property. Those projects are not related to the townhouse development on Mitchell Avenue, and they are not present to discuss those projects. With regard to the townhouse development, he said that it would not take away the walkability of the area or the sense of the community, and it would not substantially increase the traffic in this area. This request is about the townhouse development, not the fast-food development on the Springs Inn property.

Mr. Nicholson said that it was very interesting that Ms. Bergman said that, based on all of the busy streets, there is no incentive to own one of these townhomes. He then said that she is against rental units but there is no incentive to own one of these units. He asked if his client is supposed to sit on this property, let it remain vacant as a memorial, or build the site with townhomes that would be sold to the public or rented out by his client. These units will be up for sale.

In the alternative, they could just build an apartment complex on this site, which would definitely be rented; and the density would be greater as well. Mr. Nicholson said that if they were trying to maximize profit, they would place an apartment complex on this site. He said that there is not much of an issue with the townhomes themselves, or otherwise the neighbors would not be trying to have the units moved closer to the street. He added that if the townhomes are appropriate along the sidewalk, then the townhomes are appropriate for this location. They feel that the parking in front of these units does not give the appearance of second-rate housing, and they take great offense at that comment. He said that this is why they have proposed the type of landscaping along the front of the property. He then said that there will be an HOA (homeowners' association) for this property, not a national chain, to contract to have a tree replaced. His client has the incentive to keep the trees to shield this property from the commercial uses across the street, which is where the true problem is, as opposed to the subject property.

In closing, Mr. Nicholson said that there are four houses, close to this site, that are currently up for rent right now. He then said that as part of the ability to be a property owner, the house can be lived in and it can be rented. He added that no one can force a property owner not to rent their house, and the neighbors should not try to force his client or prevent him from renting one of these townhomes.

Ms. Bergman said that the reason they mentioned the commercial development is because that does have a direct impact on the traffic on their street, as will this development, and that is why these two requests are tied together. She then said that this request will be adding a number of cars to an already small street. She noted that she does not know what an HOA is, but their objection is to the design and layout of the property. They understand that the applicant can build an apartment complex or the townhouses, but they are trying to convey to the Commission that the layout of the property is what they are opposed to. She said that if the townhomes were well designed, closer to the street, then a statement could be made about those townhomes (i.e. the type of building). As this request is proposed, the parking lot is being emphasized, not the townhomes. She then said that there is no room for the neighbors to interact with each other as a community. She said that they will not bringing anything in to the sustainability of the rest of the street. The people will be there, live there for a while, then they will be gone.

In closing, Ms. Bergman said that there are too many units on this lot, and she believes that the number of units needs to be reduced, which would allow the lots to be reconfigured; then the neighborhood could deal with their proposal.

Staff Comments – Mr. Martin said that the staff had previously mentioned the proposed access easement on this property, and the need for the Planning Commission to make a finding for appropriateness of this access easements, since it will be the sole access for these lots. These are the findings submitted for Commission consideration.

1. Allowing these townhouse lots to be accessed only via an access easement is appropriate for the proposed development and will reduce the potential for vehicular and pedestrian conflicts.
2. The property is subject to an approved final development; and the use of the access easement will not negatively impact public health and safety, consistent with the intent of the Land Subdivision Regulations.

Planning Commission Questions – The Chair said that a statement was made regarding the 30' building line, and asked if the townhouses would be encroaching into that line. Mr. Martin replied negatively, and said that there is a platted 30' building line on the property; and there is a requirement on the plan that will ensure that the applicant files a record plat to amend the platted line, in conformance with the building line that is allowed in this zone for a townhouse development. He then said that with the exception of the two corner units, the townhouses are 30' from the property line. The Chair then asked, if the townhomes were pushed toward the street, if that would still apply. Mr. Martin said that the townhouses could be pushed up to the 10' setback. Mr. Nicholson clarified that the 30' building line was from the previous building that was used by the Springs Inn Motel. He then said that this development is in compliance with any 10' setback requirements that there are.

Ms. Plumlee asked if there will be HOA fees to help with the trees. Mr. Nicholson replied affirmatively, and said that every homeowner would be required to pay into the homeowners' association fee, which would cover all landscaping or any other issues, such as the dumpster or maintenance of the property. He added that this would be managed internally.

The Chair asked, if these were rental units, if the property owner (Mr. Perry) would be responsible for paying the HOA fees. Mr. Nicholson replied affirmatively, and said that if your name is on the deed, then as the property owner, you would have to pay into the fee.

Ms. Mundy asked if these townhomes would be deeded with land or wall-to-wall. Mr. Nicholson said that the lots are configured from wall to wall, but each are deeded by lot. He then said that the HOA lot is a lot unto itself.

Mr. Drake asked, if this development plan is in compliance according to statute and regulations, as Mr. Nicholson has stated, upon what basis can the Planning Commission disapprove this request. Mr. Martin said that the staff is recommending approval, subject to a change in the design layout, by deleting one unit and relocating the dumpster. He then said that under Article 21 of the Zoning Ordinance, the Planning Commission does have some room when it comes to design on the development plan. Mr. Drake then asked, if the applicant did not agree with that, what their recourse would be and if he could go to court. Mr. Martin replied he believed they could.

Mr. Berkley asked, without seeing any other layout, how the Commission is to understand that deleting one unit will solve this problem, because he can not see where the dumpster would be relocated.

The Chair asked, with the staff recommendations of deleting one unit and relocating the dumpster, if this would require the applicant to submit another development plan to the Commission for consideration. Mr. Martin said that, at this point, if the applicant were to submit an amended plan, it could be done as a minor amendment, unless the staff felt the Commission should review that amendment.

Open Discussion and Comments – Ms. Plumlee said that the Commission is sensitive to the neighbors' thoughts and concerns. She then said that members wrestle with issues as they are brought forth regarding infill and redevelopment, but they must make decisions based within the confines of the Ordinance.

Ms. Mundy said that it is very clear that the neighbors do care for their neighborhood, and she believes that there is an opportunity here for the neighborhood to grow by adding young families, young thoughts and young energy. She added that these homes are very well built, and this area is well established; but this development is an opportunity to provide 10 more people the same thing that the current neighbors love and enjoy about this area. She continued, noting that she sees this as an opportunity for this neighborhood to grow and to create a better situation for everyone.

The Chair said that the Commission speaks often of infill and redevelopment in Lexington, and he is in support of it, especially in the Urban Service Area. He then said that the applicant is proposing 10 units, and in one way or the other, the streetscape has benefits. He added that he could see the design being better if the units were on the street, but that is not the biggest issue. The remaining issues area dumpster location, density, traffic and so forth. He said that it's a fact that there will be traffic throughout town and, to him, the density and the dumpster coincide with each other. He then said that normally 10 units are fine; but for this site, 10 units pose a strain on the site. However, simply put, this property will be developed; and the Commission must do what is best for Lexington as a whole.

Mr. Cravens said that he agreed with many of the comments made, but Mr. Nicholson made it very clear that this site is zoned and suitable for these townhouses. He then said that, as part of the Springs Inn Motel, there was a large building on that site that covered the entire area. He added that he sees no problem with the dumpster, with it being landscaped.

Action - A motion was made by Mr. Cravens, seconded by Mr. Berkley and carried 6-1 (Owens opposed; Blanton, Brewer and Penn absent) to approve DP 2013-90: SPRINGDALE SUBDIVISION, UNIT 2, BLOCK A, LOTS 1, 2 & 3, subject to the following revised requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.

2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Provided the Planning Commission makes a finding on the use of an access easement in accordance with Article 6-8(m) of the Land Subdivision Regulations.
11. Denote required private open space per Art. 8-10(o)(3).
- ~~12. Reduce the number of proposed townhouses from 10 to 9.~~
- ~~13. Relocate the dumpster on the site to the approval of the Division(s) of Planning and Solid Waste.~~

*Note: A recess was declared by the Chair at 3:14 p.m. and the meeting re-convened at 3:24 p.m.*

- b. DP 2014-1: LOCUST HILL SHOPPING CENTER (PARCEL 1, LOT 1, BLOCK A) (AMD) (2/23/14)\* - located at 3101 Richmond Road. (Council District 7) **(The Roberts Group)**

Note: The Planning Commission postponed this plan at their January 16, 2014 and January 30, 2014, meetings. The purpose of this amendment is to increase buildable area for a new restaurant location and revise the outlot at 3035 Richmond Road.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Resolve removal of trees along south edge of retention area and resulting impact on canopy coverage.
10. Discuss vehicular circulation, including entry/exit from the proposed outlot developments.

Staff Presentation – Mr. Sallee directed the Commission's attention to Locust Hill Shopping Center (Parcel 1, Lot 1, Block A), and said that this is an amended final development plan for property located at 3101 Richmond Road. He oriented the Commission to the location of the subject property on the rendering and explained that the shopping center is located at the corner of Man o' War Boulevard and Richmond Road, and the area being amended is located on the center's largest lot, east of N. Locust Hill Drive. Mr. Sallee said that N. Locust Hill Drive runs along the side of the shopping center toward the rear of the property, and access to and from the subject property is provided by an access road just off N. Locust Hill Drive, as well as through a right-in and right-out access on Richmond Road. He said that the uses in the shopping center do include multiple retail establishments, as well as a Kroger store. He explained that the purpose of this amendment is to construct a new restaurant on the larger lot and to show the details of the existing fuel center, such as the kiosk and the canopy.

Mr. Sallee said that at the January Subdivision Committee meeting, the Committee had discussed this request. At that time, there was a concern with the removal of trees and landscaping along the south edge of retention area, as well as the proposed drive-through that is associated with one of the two retail spaces in the new building. He added that each of these retail spaces is to be just less than 2,000 square feet in size. He said that in the staff's review, it was pointed out that there is a discrepancy in the site statistics concerning the square footage of the kiosk. He explained that the square footage of the kiosk did not match the numerical representation on the plan, which also did not match the site statistics. He said that the kiosk is about 220 square feet; but the number shown on the plan is closer to 6,000 square feet, which is a carryover from previous plans when a retail building was being proposed. Through past amendments, that square footage was allocated into other parts of the shopping center. Just prior to today's hearing, the staff had met with the applicant's engineer, and this issue has since been resolved.

Mr. Sallee then said that the staff inadvertently undercounted the existing parking on the development plan; and, upon meeting with the applicant's engineer, they were able to show the staff that theirs is the true parking count on the development plan. This is important, because the applicant had requested to remove some parking to add additional square footage to the site; and the staff was concerned that this request may not meet the minimum parking required by the Zoning Ordinance. He said that the staff is now confident that there is a surplus of 50

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\* - Denotes date by which Commission must either approve or disapprove request.

parking spaces, even with the new building that being shown on the development plan; and this request is in compliance with the B-6P zone parking requirements. Mr. Sallee reported that redesigning the location of the building and shifting the drive-through for the end unit is acceptable to the Division of Traffic Engineering.

Mr. Sallee said that the Subdivision Committee had recommended approval of the applicant's request, subject to the conditions listed on today's agenda. He directed the Commission's attention to the staff's revised recommendation, and briefly explained that conditions #1 through #8 are standard sign-off requirements from the different divisions of the LFUCG; however, conditions #9 and #10 have been modified since the last time the Subdivision Committee had reviewed the applicant's request. He said that the staff is requesting that the applicant resolve or document the tree canopy coverage and/or clarify the tree canopy information in the site statistics for Parcel 1. This is for the area that is near the detention basin. He then said that, since the vehicular circulation is acceptable, the staff would ask that the square footage that was being shown for the outlot be relocated to another area on the property where it would be more conceivable for it to be developed. This is to ensure that: 1) the square footage is not lost; and if needed, that area can be built at some point in the future; and 2) the outlot can only reflect the existing kiosk that is present on that portion of the site.

Mr. Sallee concluded by saying that the staff is recommending approval of the applicant's request, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Resolve or document removal of trees along south edge of retention area and resulting impact on canopy coverage and/or clarify tree canopy information in site statistics for Parcel 1.
10. Discuss vehicular circulation, including entry/exit from the proposed outlot developments Relocate 5,000+ buildable area from Outlot 1 (fuel center) to area closer to Kroger store.

Representation – Bob Cornett, The Roberts Group, was present, representing the applicant. He indicated that they have already made the changes that have been requested by the staff, and explained that they have been fixing the mistakes made on this development plan since it was approved in 2005. He further explained that, with the B-6P requirements changing from 25 percent lot coverage to 35 percent lot coverage, they could conceivably request additional buildable area; but they are happy with the proposed development plan. He said that they are in agreement with the staff's revised recommendations and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Drake, seconded by Mr. Wilson and carried 7-0 (Blanton, Brewer and Penn absent) to approve DP 2014-1: LOCUST HILL SHOPPING CENTER (PARCEL 1, LOT 1, BLOCK A) (AMD), as presented by the staff.

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Ms. Mundy, seconded by Ms. Plumlee, and carried 7-0 (Blanton, Brewer and Penn absent) to approve the release and call of bonds as detailed in the memorandum dated February 13, 2014, from Barry Brock, Division of Engineering.

### **3. DEVELOPMENT PLANS** *(continued)*

- c. DP 2012-105: PARK HILLS SHOPPING CENTER, LOT 1 (AMD) (5/7/14)\* - located at 3100 Pimlico Parkway.  
(Council District 8) **(GRW)**

Note: The purpose of this amendment is to add a new restaurant with a drive-through facility. The Planning Commission originally approved this plan on December 13, 2012, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.

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6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote as a "Final Development Plan" in plan title.
9. Identify B-6P/P-1 zoning boundary and denote 60' building line from that line.
10. Resolve owners' signatures for all lots affected.

Note: The Commission's approval has since expired. The applicant now requests a reapproval of this plan.

The Staff Recommends: Postponement. The applicant submitted a different mylar to the staff for certification a few weeks ago. The previously approved plan does not match the mylar recently submitted to the staff.

Staff Presentation – Mr. Sallee directed the Commission's attention to Park Hills Shopping Center, Lot 1, and said that the staff had distributed a packet with several exhibits, as well as several email communications that were received since this request was originally approved on December 13, 2012.

Mr. Sallee directed the Commission's attention to an aerial photograph of the property and explained that the site is located at the corner of Man o' War Boulevard and Pimlico Parkway, and has an address of 3100 Pimlico Parkway. He said that there is a signalized intersection at this location, and the subject property occupies the southeast corner of the Park Hills Shopping Center. The purpose of this amended development plan is to replace the nonoperational Central Bank with a McDonald's restaurant. He then said that there is an Arby's restaurant next to the subject property, a convenience store, numerous retail stores, and other restaurants inside the shopping center. He added that there are two access points into the shopping center. One access is opposite Custer Drive; and the secondary access serves a Domino's pizza outlet, the convenience store and the rear of the center. He added that the traffic is able to move between the buildings, if needed, toward the rear of the center. Mr. Sallee directed the Commission's attention to the second aerial photograph, and said that, in taking a closer view of the subject site and the adjacent Arby's restaurant, the photograph shows the bank building and its associated parking, as well as the reciprocal access going through the Arby's lot.

Mr. Sallee said that there is an unusual circumstance with this site, which pertains to the access easement between the subject site and the Arby's restaurant. He directed the Commission's attention to the approved amended final record plat for Park Hills, Unit 1-C, and said that there is a note listed on this plat that relates to the reciprocal parking and access agreement. The Commission had discussed this note at their Committee meetings in 2012, as well as with the plat that was reapproved earlier on the Consent Agenda. He then said that, since this was initially created in the 80s, there has been a reciprocal parking and access note associated with the plat; and it is a significant issue pertaining to this development plan.

Mr. Sallee directed the Commission's attention to the development plan rendering, and noted that the Commission had approved this request in late 2012. He said that, in looking at the development plan rendering, it shows access between the McDonald's restaurant and the Arby's restaurant, as well as access into the body of the shopping center. He added that the proposal also shows a dumpster and a double drive-through at the rear of the lot. The plat that was reapproved on the Consent Agenda changed the building line along the front of the property to permit a 25' setback rather than the 50' setback shown on the original plat for this property. There is no existing access to either Pimlico Parkway or Man o' War Boulevard, from this lot and none is being proposed with this request.

Mr. Sallee then directed the Commission's attention to the staff exhibit packet and explained that the staff had received a few correspondences regarding this request from Nathan Billings, the attorney for the Arby's restaurant and John Talbott, the attorney for the Park Hills Shopping Center. He said that Nathan Billings was not able to attend today's hearing, but he wanted to express his client's opposition. He noted that, in reviewing his email, Mr. Billings had referenced the plat number in the title; but after reading his concerns, it was clear to the staff that Mr. Billings was referring to his client's objection with the development plan. Mr. Sallee said that, in the beginning, Mr. Billings had requested to be notified of any future meetings or hearings that are associated with this development plan, and the staff did inform Mr. Billings late yesterday of this pending request. He apologized for sending the notice late.

Mr. Sallee said that the staff had also received a letter in 2013 from Mr. Talbott, expressing his client's objections and concerns with the proposed access on the approved development plan. He then said that the staff had replied to Mr. Talbott, informing him that there are portions of the shopping center that have not been developed in accordance with the 1980s approved development plan. This included the areas that are adjacent to the bank lot that is currently proposed to be redeveloped, as well as a few of the circulation areas, primarily in front of the Rite-Aid store. He explained that what is currently on the ground does not match what the Planning Commission approved in the 80s. He said that these conditions have proven to be a design constraint for the proposed McDonald's restaurant, and the applicant must adhere to the existing conditions to provide access their site. He then said that their approved development plan involves a property that they do not control. Mr. Sallee said that this issue was discussed at the December, 2013, Committee meeting and it was resolved with condition #10 ("Resolve owners' signatures for all lots affected"). He explained that the development plan that was approved by the Commission in 2013 had shown a revision on the development plan immediately adjacent to their property; and since the applicant does not control the shopping center; that change required the signature of shopping center

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owners on the development plan. He said that these two property owners have not been able to come to an agreement on a single amendment that could resolve the condition that the existing "as-built" does not match the approved development plan in a fashion that would allow the McDonald's restaurant to redevelop on this property. Instead of having one constraint, there are now two constraints on the proposal: what is on the ground and what is on the approved plan, but not built, on the adjoining property (shopping center).

Mr. Sallee directed the Commission's attention to the staff exhibits, and explained that each of these pages shows a timeline on this property since the Planning Commission first approved their request. He said that, in reviewing the November, 2012 submission, the staff was concerned with the location of the dumpster. He explained that the shopping center's approved development plan shows a landscape island, but what is actually on the ground is an asphalt area. He then said that, as a result of this issue, the applicant submitted a revised development plan removing the landscape island to allow the dumpster to be serviced through the existing asphalt area. This design is what prompted the condition to require the owner's signature for all lots impacted.

Mr. Sallee said that the staff received a mylar for certification on this development plan that was based upon the 2012 Planning Commission approval. However, the dumpsters were relocated to the opposite side of the site and retained the approved landscaping island that was approved by the Commission in the 1980s. He then said that the mylar submitted was a version of the site plan that was not presented to the Commission for their approval. The mylar had tried to incorporate the existing ground conditions on the adjacent property and what has been historically approved for the adjacent property. He said that since the Planning Commission's approval had expired before the mylar was submitted to the staff, the applicant had requested for the approved development plan to be presented to the Commission for reapproval. Mr. Sallee said that, in reviewing the recommendation on the agenda, the staff had recommended postponement of this item because the submitted mylar does not match the previously approved development plan. He then said that the staff felt it was necessary to bring both development plans back in front of the Commission to explain what has transpired since the Commission's original approval in 2012. He noted that the applicant did withdraw the mylar submission, and the staff did not receive it back until the day before this hearing.

Mr. Sallee said that in one of the correspondences from Mr. Billings, he had requested that, if the Commission should reapprove the 2012 development plan, that condition #10 remain as listed. He indicated that, in reviewing the new 2014 development plan, it would not require the owner's signature. He explained that the reason for the difference is because the approved 2012 development plan would be changing the 1980s approved development plan for the shopping center; whereas the 2014 development plan is keeping the changes contained on this plan to only the subject site. The staff finds that the new 2014 development plan can be certified without the shopping center owner's signature; and given this request, the owner's signature seems to be the one issue pertaining to this site that will be discussed by all present.

Planning Commission Questions – Mr. Berkley clarified that the new 2014 development plan submittal would not require condition #10, and it is in the Commission's purview to reapprove the 2012 development plan without condition #10. Mr. Sallee replied affirmatively. Mr. Berkley asked if the issue with this site is accessing the dumpster. Mr. Sallee said that, on the current version of the development plan, accessing the dumpster is no longer an issue since it and its service area is entirely on the subject property. No changes are being made to the plan for the shopping center. However, on the approved 2012 development plan, the applicant had proposed to encroach 50 feet into the shopping center to make changes to their property, which would have required the owner's signature.

Ms. Plumlee asked if the bank traffic travels through the Arby's lot. Mr. Sallee said that, in looking at the aerial photograph of this site, the bank traffic would have traveled through the shopping center to enter the bank through the Pimlico Parkway access closest to Man o' War Boulevard. He then said that the traffic could have either used the Arby's lot or the other bank access to exit the shopping center. He believed that most of the traffic would have utilized the Arby's lot to exit the shopping center.

The Chair said that, on the original development plan, a 50' building line was shown, but now on the new development plan, 50' is not shown. Mr. Sallee said that the zone line is in the center of Pimlico Parkway and the Zoning Ordinance requires a 50-foot setback from that zone line. He then said that, at the beginning of today's hearing, the Planning Commission had approved PLAN 2012-132F: PARK HILLS, UNIT 1C, LOT 1 (AMD), which allowed the building line to be modified from 50 feet to 25 feet from the zone line.

The Chair asked if the surrounding property owners have seen the most recent development plan submittal. Mr. Sallee responded that the staff is not sure whether or not the shopping center or the other property owners have seen the most recent submittal, but he believed that the different government divisions have reviewed this latest version.

The Chair asked if it is the staff's interpretation that the latest development plan submittal resolves the issue with the signoffs. Mr. Sallee replied affirmatively, and said that the applicant has met the other standard signoffs.

Mr. Sallee directed the Commission's attention to the overhead projector, and said that the staff has documentation from the Division of Water Quality concerning the Capacity Assurance Program. He explained that the staff had

reviewed this site to make sure that this bank was not one of the “troubled banks” in Lexington for sewer capacity. According to the documentation received, this bank location was not one of those “troubled banks,” and this site does have a capacity for almost 10,000 gallons per day. He then said that the documentation received also shows that the Capacity Withdrawn indicates -1,440.0 gallons per day and that number may already be calculated for this proposal. He said that the staff believes that there is no need for an additional condition regarding the Capacity Assurance program for either the reapproval or the revised submittal.

Representation – Chris Westover, attorney; Roderick Saylor, GRW; and two McDonald’s representatives were present. She said that they have spent eighteen months trying to keep this project on their lot, and there are numerous site constraints due to the original development plan for the shopping center being different from what was built on the ground. She added that when they submitted their proposal in 2012; they realized that if they wanted to build on this site, as they intended, they would need to obtain the shopping centers owners signature. However, they have been unable to acquire that signature. Ms. Westover said that they had to also consider the possibility of the shopping center changing their property to the way the development plan was originally approved in the 1980s. She then said that, after eighteen months of designing this proposal, they have achieved an appropriate layout that only impacts the subject property. She added that all of the improvements will be on their own lot and will not impact the shopping center; therefore, the property owner’s signatures are not needed.

Ms. Westover indicated they have addressed the issues pertaining to this site, and requested approval of the latest development plan. She requested that the Commission delete condition #10, since there is no longer any need for the other property owner’s signature. She added that there is a reciprocal access easement throughout this property; and since they have no road frontage or access to a public street, the only way they can operate their business is to have the reciprocal parking and access through the shopping center, including the Arby’s lot. She said that their proposal meets the Zoning Ordinance and the Land Subdivision Regulations 100%, and they requested approval of the latest submission, deleting condition #10.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. Reza Tamaji, owner of Arby’s restaurant, was present. He said that he owns several Arby’s restaurants that are next to McDonald’s restaurants, and those restaurants are very successful because there is no competition between the different menus and they do benefit from the incoming traffic that is brought in by McDonald’s.

Mr. Tamaji said that, at the time the bank was open, there was no issue with traffic because the bank traffic was spread out through the day; but the national average for a McDonald’s restaurant is to generate up to 1,400 cars per day. He explained that the majority of this traffic will be between 6:00 a.m. and 8:00 a.m.; 11:30 a.m. and 1:00 p.m.; and 5:00 p.m. and 7:00 p.m. This is the same time people will be traveling through the neighborhood, either coming or going to work or home; and right now, Pimlico Parkway and Man o’ War Boulevard traffic is a nightmare. He believes that the traffic exiting this shopping center will cause stacking on both the Arby’s lot and throughout the shopping center. The traffic stacking on the Arby’s lot will impact his drive-through customers, as well as his sit-down customers, trying to park to come in.

Mr. Tamaji said that he had requested that an impartial traffic engineer study this area to determine the potential impacts of this proposal. He then said that he has faced this type of situation before and he knows what the outcome will be. He explained that he is not against McDonald’s being his neighbor, but this proposal will cause problems for both the shopping center and the Arby’s business due to the increased traffic burden. He believes that the Arby’s lot will be providing access for McDonald’s, and the Arby’s business will be destroyed. There is no benefit for him, and he will be giving up everything. Mr. Tamaji said that he would be very surprised if McDonald’s traffic engineer approves this proposal for this location. He requested that, before the Planning Commission approves this request, an independent traffic engineer study this site for the potential traffic impact to this area.

John Talbott, attorney, was present on behalf of the shopping center. He said that his client was not contacted by McDonald’s until after the first development plan was submitted and approved by the Commission in 2012. He said that, after that approval, there was an exchange of correspondence about the development plan between his clients and, at that time, a different law firm, who represented McDonald’s. He said that his clients understand that this lot will be developed; but in looking at the aerial photograph, this site is configured facing Pimlico Parkway with traffic exiting through the Arby’s lot or back to the shopping center. He explained that the current proposal does not provide an exit out of the McDonald’s lot, and the traffic generated from this proposal will cause stacking across the Arby’s lot. He said that access easements can be both positive and negative, but they also must be reasonable. The Commission should not burden one property with the traffic from another property, especially from a McDonald’s. This proposal will impact the shopping center, the Arby’s restaurant, and Pimlico Parkway.

Mr. Talbott requested that, should the Commission approve the applicant’s request, the applicant be required to show an entrance and an exit on their property. This will confine their traffic on their lot. He also requested that condition #10 should remain as part of the Commission’s approval.

Planning Commission Questions – Mr. Wilson asked if Mr. Talbott or his clients had spoken with McDonald’s regarding confining the access to their property. Mr. Talbott replied negatively, and said that they were not made aware of this proposal until they received the Planning Commission agenda. Mr. Wilson confirmed that there has

been no conversation between the two parties relating to their recommendation. Mr. Talbott replied that he and Ms. Westover had had a phone conversation. Mr. Wilson asked why the two parties haven't met about this proposal. Mr. Talbott said that they would be glad to meet with Ms. Westover to discuss this request.

Rebuttal – Ms. Westover said that Mr. Talbott is correct that an easement needs to be reasonable, but there is Kentucky case law that says the reasonableness of the easement must be in light of the purpose of the easement. She then said that when this shopping center was approved by the Commission in the 80s, it was approved for a Planned Shopping Center (B-6P) development. She added that the B-6P zone allows banks, retail stores, grocery stores and fast food restaurants. She said that when the reciprocal parking and access was proposed, it necessarily contemplated that reciprocal parking and access would be considered for the uses permitted in the B-6P zone. She then said that if the property owner for the shopping center wanted to have limiting language, it should have been in the form of a strict covenant, should uses change or certain thing could occur that would impact the easements. Ms. Westover said that there is a reciprocal parking and access easement; and, under the law, any use that is reasonable and permitted in the B-6P zone can be approved for this lot. She then said that her clients could have obtained a building permit, retrofitted the bank building and started operations without bringing this back to the Commission, regardless of the current issue. She added that McDonald's will be constructing a new building that will only impact the subject property. There is no physical impact to the shopping center property or the Arby's lot.

Ms. Westover said that they have a problem in delaying this proposal because there have been discussions between her clients and the shopping center for well over a year and nothing has come of it. She then said that for whatever reason, they strongly believe the shopping center will not agree to any proposal made by her clients. She added that they have put considerable time and expense into this proposal; and to add more delay for more conversations, in all likelihood it will not be fruitful.

Jon Bernard, McDonald's real estate division, said that it was mentioned that they have not reached out to Mr. Talbott; however, he has an email that documents the correspondence between him and Mr. Talbott over two years ago. He then said that they had provided Mr. Talbott with multiple sketches, resulting in Mr. Talbott stating that the Park Hills Shopping Center has no interest in any of the proposals. He then said that for Mr. Talbott to say they did not reach out to his clients is incorrect, since they did in fact reach out to the shopping center on multiple occasions regarding the different sketches.

Mr. Talbott asked to see the email correspondences that were mentioned by Mr. Bernard. Mr. Bernard supplied copies of these emails to Mr. Talbott.

Roderick Saylor, GRW, said that, per the approved 1980s development plan, there were multiple exits from the subject property; but it was not constructed in that manner. Parking spaces were constructed instead. He then said that Mr. Talbott had requested for McDonald's to produce an exit other than across the Arby's lot; but the shopping center was not willing to work with McDonald's, so they were not able to produce other options for this site that could have been more favorable to the other parties. He then said that they were locked in to meet what was currently on the ground and what was approved on the development plan. If the entrance was constructed, as approved, it would have opened up more possible ways to accommodate the McDonald's site; but with the current ground conditions, it is not possible to only impact the subject site.

Mr. Tamaji said that he received no communication about this proposed project, and he does not have objections to the McDonald's restaurant coming to this area. He believes that the current design could be reversed to provide the entrance and exit toward the shopping center without adding any impact to the Arby's lot. He said that he has had experience in redesigning the Lansdowne Shopping Center to attain a more reasonable design to satisfy the city and the surrounding neighborhoods. He added that they could have pushed that building closer to Tates Creek Road, but it would not be functional for the area. Mr. Tamaji said that he would enjoy McDonald's being his neighbor, but this site needs to be functional for the shopping center and to the area. He explained that the exit out of the Arby's lot only has enough room for one car; and creating the situation of multiple cars stacking would make the traffic impossible to exit out of the shopping center. He suggested that a traffic engineer study this area to determine a situation that will work for everyone involved. He said that he would like to sit down with all the parties involved to discuss a solution rather than approve something that will cause regret.

Planning Commission Questions – The Chair asked if the Division of Traffic Engineering had anything to add regarding this request. Ms. Casey Kaucher replied negatively.

Ms. Mundy said that it seems to her that the building orientation could be reversed to omit traffic from crossing the Arby's restaurant property.

Mr. Cravens asked what it would take for the shopping center to sign off on this proposal. Mr. Talbott said that the building's orientation could be reversed, as Ms. Mundy suggested. Mr. Cravens said that there are two parking spaces in the area where an exit could be provided, but the shopping center would need to agree on their removal. Mr. Talbott said that that is correct. He then said that the applicant had previously supplied a design showing the entrance and the exit to remain entirely on their property, but the dumpster location was an issue with his clients because it was in the middle of the shopping center parking lot. Mr. Cravens said that he agrees that the traffic should not cross the Arby's

lot. He asked, if the entrance and exit were to face the shopping center, what would it take, at this point, for Mr. Talbott's clients to sign off on this proposal. He then asked if his clients would agree to the parking spaces being removed to provide this type of design. Mr. Talbott said that from previous discussion with his clients, they would not object to that proposal; but he would need to further discuss that option with them.

Ms. Westover said that they have tried to discuss different options with them, but they have either been unable or unwilling to discuss any other access on this lot. She then said that this development can not afford any additional delays in trying to negotiate with the shopping center. She added that their development is entirely on their lot; and under the applicable law for easements, this is a B-6P property no matter if the use is a bank or a fast food restaurant. She said that they would have preferred to have resolved this issue over a year ago, but that time has passed and is no longer there. There has been too much delay already on this project. She said that they have tried to work with two constraints placed on this site, and the "access" that is being discussed is not possible due the ground conditions being different from what was originally approved by the Commission. She then said that they feel it would be very unfair to ask her clients to go back again to try to discuss this proposal with the shopping center. Ms. Westover respectfully requested the Commission to approve this proposal. She indicated that they would be willing to meet with the shopping center, after the fact, but they would like to move forward with this proposal.

Mr. Wilson said that this has nothing to do with whether or not they have the legal right to develop this property; but; rather, the issue is the potential impact on the surrounding community. He asked why a traffic study was not conducted for this site. Mr. Sallee explained that the 2012 approval was not part of a zone change request; therefore, a traffic impact study was not required for this property. Ms. Westover said that stacking was studied for this site and was determined to not be an issue.

Gus Mazzara, construction manager for McDonald's restaurant, said that he has over 20 years of experience in designing McDonald's layouts, drive-through and parking. He then said that he understands the concerns that were mentioned today, but the traffic will be at different times throughout the day. He noted that the development plan that was submitted to the staff does show access into the shopping center, as well as into the adjacent property, and traffic will flow in the least resistant direction. He said that they are very happy with the current design and they believe that the two access points will function correctly.

Mr. Drake said that, when he visited the bank as a customer, he would always exit the bank through the shopping center back to Pimlico Parkway, either through the main entrance or down at the convenience store. He then said that he did not travel through the Arby's lot because it was a nightmare trying to get back on to Pimlico Parkway this way. He asked, as the current plan is laid out if it requires that McDonald's customers, at the rear, traverse the Arby's property. Mr. Mazzara explained that on the currently proposed development plan, traffic can either travel through the Arby's lot or exit back to the shopping center parking lot. Mr. Drake then asked if it would be impractical to only make the exit be to the shopping center, eliminating the cross traffic through the Arby's lot. Mr. Mazzara said that they prefer to keep all access points to provide more flexibility to the customers. He then said that this is a matter of providing convenience to the customers. He added that they would prefer not to make any site revisions during the hearing.

The Chair agreed that site revisions should not be made during the hearing. He asked when the new development plan was submitted to the staff. Mr. Sallee said that the applicant submitted the new development plan in January, 2014. The Chair then asked if the reason the staff recommended postponement was due to the mylar not matching the approved development plan, and the staff felt the Commission should have the opportunity to review the changes. Mr. Sallee replied affirmatively.

The Chair asked if the previous recommendations would also apply to the latest development plan that was presented to the Commission. Mr. Sallee explained that, should the Commission consider approving the 2014 development plan, it should be subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote as a "Final Development Plan" in plan title.
9. Identify B-6P/P-1 zoning boundary and denote 60' building line from that line.
- ~~10. Resolve owners' signatures for all lots affected.~~

Mr. Sallee then explained that, should the Commission consider reapproving the 2012 development plan, it should be subject to the original following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.

6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote as a "Final Development Plan" in plan title.
9. Identify B-6P/P-1 zoning boundary and denote 60' building line from that line.
10. Resolve owners' signatures for all lots affected.

Mr. Talbott said that the Commission had approved the original development plan in 2012, and the applicant had presented the latest development plan in January. He then said that there has been very little communication with all parties involved between the original approval and the latest submission. He requested that the Commission postpone this item for one month to allow further discussion between his client and the McDonald's representatives. He clarified that the previous emails were sent in 2012; and at that time, McDonald's was suggesting having the dumpster on the Pak Hills Shopping Center property and the entrance and exit on their property. This design would take the traffic back through the shopping center as the drive aisles were designed to do, which is the appropriate way for this area to be developed.

Ms. Westover said that even a 30-day delay would not have any effect in this matter, and there is access being provided to the shopping center drive aisle. She then said that all of the development is within the McDonald's property, and she respectfully requested that the Commission approve the 2014 development plan as submitted, subject to the conditions listed on the agenda, deleting condition #10.

Mr. Wilson said that a 30-day postponement is not a long time if both parties meet to discuss the issue. However, if this is simply a delaying tactic, he disagrees with the postponement request because he does not believe the Commission wants to rehear this issue again. He then said that if there is a reasonable compromise that could come from a 30-day postponement, then the Commission could grant the request.

The Chair said that it seemed to him that if the development plan had not expired, this issue would not be presented to the Commission. He then said that the applicant had submitted a revision to the staff, and asked if it is better than what the Commission had previously reviewed. He said that he was not sure, but it was up to the Commission to go forward with a recommendation.

Mr. Wilson clarified that if the Commission approved the latest 2014 development plan, it would be subject to the original recommendations, deleting condition #10; and if the Commission reapproved the original 2012 development plan, it would be subject to the original recommendations, retaining condition #10. The Chair replied affirmatively.

Mr. Wilson asked if it was the staff's recommendation to postpone this item. Mr. Sallee said that the staff was recommending postponement until they received the 2014 development plan. Mr. Wilson then asked when the staff received the latest submission. Mr. Sallee said that the applicant submitted the development plan in January, and then submitted a revised version the day before today's hearing. He added that the request for reapproval was for the 2012 development plan. Mr. Wilson asked, now that the staff had seen the 2014 version, what the staff's recommendation was. Mr. Sallee said that the staff was recommending approval, subject to the conditions #1 through #9 listed on today's agenda.

*Note: Mr. Drake departed the meeting at this time.*

Action - A motion was made by Mr. Berkley to approve DP 2012-105: PARK HILLS SHOPPING CENTER, LOT 1 (AMD), subject to the conditions #1 through #9 listed on today's agenda.

The motion died for lack of second.

Action - A motion was made by Mr. Wilson, and seconded by Ms. Plumlee to continue DP 2012-105: PARK HILLS SHOPPING CENTER, LOT 1 (AMD), to the March 13, 2014, Planning Commission meeting.

Discussion of Motion – Mr. Cravens asked what Mr. Wilson would like to be worked out in the next 30 days. Mr. Wilson said that he believes that both McDonald's and Arby's are wonderful, but the impact of this development plan on the surrounding neighbors, more specifically the Arby's restaurant, should be addressed. He then said that he would like to see the entrance and exit issue addressed; and if it does not work, then the Commission can address that concern at that time. He added that he would like to see an independent traffic study done for this area.

The motion carried 6-0 (Blanton, Brewer, Drake and Penn absent).

**VI. COMMISSION ITEM** – The Chair informed the Commission members, the staff and the audience members that Ms. Eunice Beatty has resigned from the Planning Commission due to other obligations, noting that she will be dearly missed.

**VII. STAFF ITEMS** – No such items were presented.

- A. **UPCOMING WORK SESSION** – Mr. King reminded the Commission members of the upcoming public meeting for the implementation for the Comprehensive Plan scheduled for February 20, 2012. he said that immediately after that hearing there would be the regularly scheduled work session.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **NEXT MEETING DATES**

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building) .....	February 26, 2014
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....	<b>February 27, 2014</b>
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building) .....	March 6, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building) .....	March 6, 2014
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....	<b>March 13, 2014</b>

- X. **ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 4:40 PM.

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Mike Owens, Chair

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Carla Blanton, Secretary